

Decision 02-10-015 October 3, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company For Expedited Approval Under Section 851 For An Easement From PG&E Allowing Elk Hills Power Project to Install and Maintain Electric Transmission Generation Tie Line Facilities on or over PG&E Utility Property and for related Access. (U 39 M)

Application 01-11-016
(Filed November 5, 2001)

**DECISION GRANTING APPROVAL UNDER
PUBLIC UTILITIES CODE SECTION 851 FOR AN EASEMENT**

1. Summary

This decision grants the request by Pacific Gas & Electric Company (PG&E) for approval of an easement on PG&E land under Pub. Util. Code § 851.¹ The easement is needed to allow for installation, maintenance, and operation of an overhead generation tie line and related facilities associated with a new electric generation plant currently under construction in western Kern County, by Elk Hills Power LLC (Elk Hills).²

2. Request

On November 5, 2001, PG&E filed this application requesting expedited approval of an easement with Elk Hills under Pub. Util. Code § 851. PG&E filed

¹ All statutory references are to the Public Utilities Code unless noted otherwise.

² Elk Hills is a joint venture of Sempra Energy Resources and Occidental Energy Ventures Corp.

two motions concurrent with its application, a motion to shorten time to respond to the application and a motion for waiver of Rule 36(b) of the Commission's Rules of Practice and Procedure (Rules). The assigned Administrative Law Judge (ALJ) denied both motions on December 7, 2001.

3. Background

Elk Hills is a new 500 megawatt (MW) combined-cycle natural gas fired power plant. Elk Hills will connect to the existing 230 kilovolt (kV) transmission system via an 8.6-mile generation tie line between the generator and PG&E's Midway Substation. The generation tie line traverses several existing PG&E transmission line rights of way. Elk Hills received final certification for its proposed generator and the attendant transmission line from the California State Energy Resources Conservation and Development Commission (CEC) on December 6, 2000. Elk Hills will construct and operate the transmission line, which will interconnect to the transmission grid at PG&E's Midway Substation.

The Elk Hills transmission project consists of a new 230 kV switchyard, 8.6 miles of double circuit transmission line on tubular steel pole structures and upgrades to Midway Substation. (CEC Adoption Order, Docket No. 99-AFC-1, p. 77.) Elk Hills is the sole user and beneficiary of the generation tie line.

Notice of the filing of PG&E's application appeared in the Commission's November 16, 2001 Daily Calendar. By ruling, the assigned ALJ extended the protest period to 15 days after PG&E filed a copy of its proposed easement with Elk Hills. No protests were filed.³

³ ALJ Resolution 176-3076 preliminarily determined that the application was expected to go to hearing. Because no formal protests were filed, hearings are unnecessary.

4. Discussion

4.1 Environmental Review

Elk Hills and its related facilities were reviewed under the CEC's licensing jurisdiction established in Public Resources Code §§ 25500 et seq. The CEC acts as lead agency under the California Environmental Quality Act (CEQA) and its process is considered functionally equivalent to preparation of an Environmental Impact Report. (Public Resources Code §§ 25519(c), 21000 et seq., 21080.5.) Rule 17.1 of the Commission's Rules of specifically exempts projects subject to CEC review under Public Resources Code § 25500 from the requirement of preparing and submitting a proponent's environmental assessment and undergoing an environmental impact report.

The Commission is in the role of responsible agency under CEQA. As a responsible agency, the Commission has certain legal obligations. The scope of our permitting authority under the present Application is limited to whether to grant the easements for the generation tie line. We are not approving the Elk Hills generating unit, and accordingly we are not in a position to make findings relating to those facilities. The CEC conducted environmental analysis of the generation project and associated transmission line as part of the certification process. The CEC found that the conditions of certification will assure that the generation project and associated transmission line will have no significant adverse environmental impact.

The CEC specifically found that:

“2. The Conditions of Certification contained in the accompanying text, if implemented by the Applicant, ensure that the project will be designed, sited and operated in conformity with the applicable local, regional, state, and federal laws, ordinances, regulations, and standards including

applicable public health and safety standards, and air and water quality standards.” (Order No. 00-1206-04, CEC Adoption Order, Docket No. 99-AFC-1, p. 1.)

“3. Implementation of the Conditions of Certification contained in the accompanying text will ensure protection of environmental quality and assure reasonably safe and reliable operation of the facility. The Conditions of Certification also assure that the project will neither result in, nor contribute substantially to, any significant direct, indirect, or cumulative adverse environmental impacts.” (Order No. 00-1206-04, CEC Adoption Order, Docket No. 99-AFC-1, p. 2.)

The CEC reviewed the impacts of the project with respect to transmission line engineering, safety and nuisance, air quality, public health, hazardous materials management, worker safety, biological resources, cultural resources, geology and paleontology, soil and water resources, waste management, land use, noise, socio-economics, traffic and transportation, and visual resources. The CEC found that no significant impacts would result from construction and operation of Elk Hills. (See Order No. 00-1206-04, CEC Adoption Order, Docket No. 99-AFC-1, pp. 81-82, 88, 120-122, 142-143, 147-148, 161-162, 178, 195, 214, 256-257, 267-268, 276, 282-283, 291-292, 304-305, and 318.)

Because the CEC has conducted an environmental review of the transmission line, there is no need for the Commission to conduct such a review. Consistent with CEQA Guideline 15091(a), we adopt the mitigation measures described and approved by the CEC. Additionally, no one in this proceeding raises any environmental concerns and we have not discovered any.

4.2 Applicability of Pub. Util. Code § 851

PG&E’s application is made under § 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or

otherwise encumber the whole or any part of its property that is necessary or useful in the performance of its duties to the public. Granting of an easement on utility property is an encumbrance, and therefore requires approval under § 851.⁴

PG&E's application states that, in addition to the easement Elk Hills seeks from PG&E, Elk Hills will be acquiring easements from other property owners along the generation tie line. In several cases, PG&E holds a non-exclusive easement with the property owner and Elk Hills will be acquiring a non-interfering easement from the same property owner. In some situations, an existing non-exclusive easement between PG&E and a property owner requires PG&E's written consent for later grants of easements. PG&E asserts that in both cases, because PG&E is not the fee owner, but rather a non-exclusive easement holder, § 851 does not apply.

An easement is a property right. Section 851 applies when a utility seeks to encumber property. In order to conclude whether § 851 does or does not apply to the existing easements, the assigned ALJ directed PG&E to file additional documentation regarding the existing easements. PG&E complied on December 20, 2001. The existing easements demonstrate that, in this case, new easements between the property owner and Elk Hills, where PG&E holds an existing non-exclusive easement, will not constitute encumbrance of utility property. Therefore, we find, based on the facts before us, that § 851 does not

⁴ As the Commission previously stated: "The language of Section 851 is expansive, and we conclude that it makes sense to read "encumber" in this statute as embracing the broader sense of placing a physical burden, which affects the physical condition of the property, on the utility's plant, system, or property." (D.92-07-007, 45 CPUC 2d 24, 29.)

apply to new easements sought by Elk Hills that cross existing non-exclusive easements held by PG&E along the Elk Hills project right of way.

4.3 Easement Agreement

On April 10, 2002, PG&E filed the instant easement agreement between PG&E and Elk Hills. The purpose of the easement is to permit the generation tie line from Elk Hills to interconnect with the electric transmission grid at PG&E's Midway Substation. This use is consistent with the use of the utility property in question. One reason for a substation to exist is to allow interconnection of electrical generation facilities. PG&E states that the existence, maintenance, and operation of Elk Hills facilities (and their easements) will not interfere in any way with the operation of PG&E's facilities, or in the provision of service to PG&E's customers. PG&E notes that modifications to Midway Substation will be required to accommodate the Elk Hills project, but that the cost of such modifications will be borne by Elk Hills, and would be required even if no easement was required.

The task of the Commission in a § 851 proceeding is to review the transaction, "[T]o ensure that it will not impair the utility's ability to provide service to the public." (D.96-04-045.) We have reviewed the easement submitted by PG&E and it does not appear to impair PG&E's ability to provide utility service to the public.

Were we to deny PG&E's application, the effect would be to significantly delay, if not totally prevent, the interconnection and operation of the 500 MW Elk Hills project. Blocking the availability of this generation would not be consistent with state policy, absent some significant and compelling reason. No such weighty counterbalance is present here. In addition, because

the easement will facilitate the interconnection of additional generation to the interstate electric grid, approval of the easement provides positive benefits and is in the public interest. We approve the easement under § 851.

4.4 Ratemaking

The scope of Commission versus Federal Energy Regulatory Commission (FERC) jurisdiction over electric transmission facilities is not before us today, but we note that this decision does not cede any Commission jurisdiction. Instead, we take this opportunity to describe PG&E's proposed treatment of revenues from the easement. PG&E plans to treat the revenue from the easement as FERC jurisdictional "Other Electrical Revenues" and to share the revenue equally between ratepayers and shareholders. PG&E argues that this treatment is consistent with a March 29, 2001 declaratory order issued by FERC (90 FERC 61, 314).

5. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

6. Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Janice L. Grau is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The CEC conducted an environmental review of Elk Hills, including the transmission project, as part of its Application for Certification process in Docket No. 99-AFC-1.

2. The CEC approved Elk Hills, including the transmission project, on December 6, 2000, with Conditions of Certification.

3. In order for Elk Hills to operate and interconnect its generating unit, an easement on PG&E property is required.

4. The purposes of the easement are consistent with the current uses of the related PG&E properties.

5. The easements will not impair PG&E's ability to provide service to the public.

Conclusions of Law

1. The proposed transmission line to connect Elk Hills to PG&E's existing Midway Substation is needed in order to allow Elk Hills' output to reach the grid.

2. Rule 17.1 of the Commission's Rules specifically exempts projects subject to CEC review under Public Resources Code § 25500 from the requirement of preparing and submitting a proponent's environmental assessment and undergoing an environmental impact report.

3. No additional environmental review of the transmission project is needed.

4. No significant environmental impacts will result from construction, operation, or maintenance of the transmission project.

5. PG&E is required to obtain Commission authorization, pursuant to Pub. Util. Code § 851, to provide an easement over its property to another entity.

6. Granting the requested easement is in the public interest.

O R D E R

IT IS ORDERED that:

1. Under Rule 6.6 of the Commission's Rules of Practice and Procedure, this order is a final determination that a hearing is not needed in this proceeding.
2. Pacific Gas and Electric Company's Application for authority to grant an easement on utility property is granted.
3. This proceeding is closed.

This order is effective today.

Dated October 3, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners